

## Committee Weighs 'License to Discriminate' Adoption Bill

*John Wright Apr 16, 2015, 9:46 am CST*

Rep. Scott Sanford (R-McKinney) says he wants to make sure faith-based adoption agencies that receive state funding aren't forced to close their doors if they refuse to place children with same-sex couples.

But opponents of Sanford's [House Bill 3864](#) say it could have unintended consequences, such as allowing foster homes to force gay youth to undergo conversion therapy or require Christian youth to attend Muslim schools.

On Wednesday, Sanford told a House committee that in some states where same-sex marriage is legal, organizations such as Catholic Charities have shut down rather than comply with laws barring discrimination against gay couples.

"Faith-based organizations have played a vital role in serving our nation's orphan and needy children since America's founding, and this legislation protects their operations," Sanford said. "States without these protective measures have had organizations cease to operate, placing more demand on government."

HB 3864, which Sanford is calling the "Hope for Orphans and Minors Expansion Act," or HOME, would prohibit the state from taking "adverse action" against child welfare providers that receive taxpayer dollars and act based on "sincerely held religious beliefs." It would also protect the rights of state-funded agencies to provide religious education to children and to deny them access to abortions or birth control.

During the hearing on Wednesday, opponents said Sanford's bill would allow the religious convictions of providers to trump the best interests of children. They also said the rights of faith-based providers are already protected under the state's 1999 Religious Freedom Restoration Act.

Sarah Crockett, public policy coordinator for [Texas CASA](#), said the organization is neutral on the bill. Crockett acknowledged that faith-based organizations account for the majority of child-placing agencies in the state, calling them "essential" to the system.



State Rep. Scott Sanford (R-McKinney)

But Crockett said she fears HB 3864 would infringe on the rights of children in foster care, as laid out by the Department of Family and Protective Services. Those rights currently include protections against discrimination based on sexual orientation and gender identity, as well as the right to receive a religious education of their choosing.

Under the bill, if officials determined a child's rights were violated and recommended removal from an agency, the provider could sue the state.

"The rights and best interests of children, especially the vulnerable and traumatized children at the center of this bill, should be considered paramount," Crockett said. "We feel like this is a solution for something that's not a problem."

Those who testified in support of the bill included several women who became pregnant as teenagers and put their children up for adoption. They said if faith-based adoption agencies shut down, it would be harder for teen mothers to ensure their children are placed in Christian homes.

Also testifying in support of the bill were representatives from social conservative groups Concerned Women for America and the Liberty Institute, as well as a high-ranking official from the Texas attorney general's office.

Brantley Starr, deputy attorney general for legal counsel, said the AG's office is officially neutral on the bill. But Republican Attorney General Ken Paxton has championed so-called religious liberty, and Starr offered supportive testimony.

Starr said a substitute version of the bill makes clear that providers couldn't "decline intake" of a child based on religious beliefs.

"This bill doesn't give the providers the license to discriminate on the front end of which child they would take," he said.

Starr said the bill is needed because the Religious Freedom Restoration Act provides too much latitude to judges, who could determine that protecting the rights of same-sex couples constitutes a compelling state interest that outweighs the religious beliefs of state-funded child welfare providers.

“With more government regulation, judges can view compelling interest as anything,” Starr said. “My cell phone, I used to be able to use it in my car in Austin, I can’t now. It may be a compelling governmental interest in the minds of some judges to actually do that. As time passes on, judges can view more and more things as a compelling interest, so there’s a greater need for the Legislature to clarify which areas it believes religious rights of conscience should be protected, so the courts don’t have to wade into the issue.”

Members of the committee, which is stacked with social conservatives, appeared supportive of the bill. Rep. Debbie Riddle (R-Spring) called HB 3864 “fabulous” and repeatedly told supportive witnesses from Christian groups they were “doing the Lord’s work.”

Rep. Bryan Hughes (R-Mineola) pressed opponents of the bill about whether they think faith-based adoption agencies should be allowed to refuse to place children with gay parents.

“I think that’s OK if the alternative is not having them participate at all,” Hughes said.

Kathy Miller, president of the Texas Freedom Network, testified against the bill. She acknowledged that while faith-based child welfare providers can currently discriminate against same-sex couples, it’s likely that will be challenged in the future.

“It does seem that this bill is designed to ensure that religious providers can use that faith to discriminate against LGBT families and children,” Miller said. “Just as in Indiana, when this kind of issue arose to allow religion to be used to discriminate against LGBT families, I think it would be wrong for this state to move in that direction.”

The bill was left pending in the committee.

Do you think free access to journalism like this is important?

The *Texas Observer* depends on support from its members to keep telling stories like the one you are reading now. This fall we're looking for 200 more sustaining members—people like you who can give us as little as \$0.99 per month. Your membership means we can continue shedding light on issues that might otherwise go unreported. Can we count on you?